

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

RED LION HOTELS
FRANCHISING, INC.,

Plaintiff,

v.

JOSEPH G. GILLESPIE III,

Defendant.

NO. 2:20-CV-0151-TOR

ORDER GRANTING PLAINTIFF'S
MOTION FOR PARTIAL DEFAULT
JUDGMENT

BEFORE THE COURT is Plaintiff's Motion for Partial Default Judgment (ECF No. 8). This matter was submitted for consideration without oral argument. The Court has reviewed the record and files herein, and is fully informed. For the reasons discussed below, Plaintiff's Motion for Partial Default Judgment (ECF No. 8) is **GRANTED**.

BACKGROUND

This case arises out of personal guarantees made on contracts involving ten hotel properties. ECF No. 1. On April 15, 2020, Plaintiff filed a complaint against

1 Defendant for various breach of contract claims. *Id.* On January 13, 2020,
2 Defendant was served with the summons and complaint. ECF No. 4. On June 9,
3 2020, Defendant having failed to answer, plead, or otherwise defend against the
4 complaint, Plaintiff filed a Motion for Entry of Default. ECF No. 5. That same
5 day, the Clerk of the Court entered the Order of Default. ECF No. 7. On August
6 26, 2020, Plaintiff filed the instant Motion for Partial Default Judgment. ECF No.
7 8.¹ The factual allegations, as set forth below, are derived from Plaintiff's motion
8 and supporting documents. ECF Nos. 8-16.

9 Effective February 23, 2018, Plaintiff and Defendant entered into an
10 agreement where Defendant personally guaranteed ten limited liability companies'
11 ("LLC") performances under their respective Franchise License Agreement,
12 Property Improvement Plan ("PIP") Notes, Omnibus Amendment to Loan
13 Documents, Key Money Note, Hotel Financing and Security Agreement, and
14 Brand Standard Equipment Note. ECF No. 8 at 3-4; ECF No. 9 at 19, ¶ 37.

15 **A. Franchise License Agreements**

16 Under the Franchise License Agreements, Plaintiff granted each LLC the
17 limited right to use Plaintiff's intellectual property in connection with hotel

18
19 ¹ The present motion excludes Plaintiff's claims for damages that remain
20 contingent and unliquidated. ECF No. 8 at 1-2.

1 operations. ECF No. 8 at 4. In exchange, each LLC agreed to pay franchise
2 royalty, program, and reservation fees. *Id.* Plaintiff personally guaranteed
3 obligations arising from the ten separate Franchise License Agreement for the
4 respective LLCs. *Id.* at 5. Per these agreements as to nine of the LLCs, Plaintiff is
5 owed unpaid fees plus interest in the amount of \$2,103,576.11 and liquidated
6 damages in the amount \$3,706,819.54. ECF No. 8 at 16.

7 **B. PIP Agreements and Notes**

8 Plaintiff disbursed loans to each LLC for hotel property improvements under
9 PIP Financing Agreements, secured by PIP Promissory Notes as amended by the
10 Omnibus Amendment to Loan Documents. ECF No. 8 at 5; ECF No. 9 at 5-7.
11 Under these Notes, interest began to accrue upon default at 18 percent per annum
12 on the PIP Financing Agreements and Promissory Notes. *Id.* Each LLC defaulted
13 by failing to make payments as required under the PIP Notes. *Id.* Plaintiff
14 advanced funds under four PIP Promissory Notes. *Id.* Per these PIP Notes,
15 Plaintiff is owed \$559,190.36 in principal and interest. ECF No. 8 at 17.

16 **C. Key Money Notes**

17 Plaintiff disbursed loans to each LLC, secured by Key Money Promissory
18 Notes as amended by the Omnibus Amendment to Loan Documents. ECF No. 8 at
19 6; ECF No. 9 at 7-12. Upon the termination of an LLC's Franchise License
20 Agreement, each LLC was required to pay Plaintiff the Key Money Note's

1 principal balance plus the higher of 18 percent per annum and the maximum rate
2 permissible under applicable law. *Id.* Each LLC defaulted by failing to make
3 payments as required under the Key Money Notes. *Id.* Defendant personally
4 guaranteed obligations arising under the ten separate Key Money Notes. *Id.* Per
5 these Key Money Notes, Plaintiff is owed \$5,266,920.83 in principal and interest.
6 ECF No. 8 at 17.

7 **D. Brand Standard Equipment Agreements and Notes**

8 Plaintiff executed Hotel Improvement Financing and Security Agreements
9 with each LLC, also known as Brand Standard Equipment (“BSE”) loans, secured
10 by BSE Promissory Notes as amended by the Omnibus Amendment to Loan
11 Documents. ECF No. 8 at 6; ECF No. 9 at 12-19. Under these Agreements,
12 Plaintiff authorized loans to finance the hotel improvements controlled by each
13 LLC. *Id.* Each LLC defaulted by failing to make payments as required by the
14 BSE Promissory Notes. *Id.* at 6-7. Per the BSE Promissory Notes, the parties
15 agreed that any action would be governed by the laws of Washington and
16 Defendant submitted to exclusive jurisdiction of the federal and state courts in
17 Washington. ECF No. 8 at 4. Additionally, Defendant agreed to reimburse
18 Plaintiff for all attorney’s fees incurred in connection with collecting or enforcing
19 the BSE Notes, including bankruptcy matters. *Id.* Per these BSE Notes, Plaintiff
20 is owed \$291,335.90 in principal and interest. ECF No. 8 at 17.

E. Termination of Franchise License Agreement

On August 7, 2019, Plaintiff notified the ten LLCs that they had breached obligations owed their respective Franchise License Agreements, PIP Promissory Notes, BSE Agreements and Notes, and Key Money Notes. ECF No. 8 at 7. On September 25, 2019, Plaintiff terminated Franchise License Agreements for five of the LLCs. *Id.* On November 22, 2019, Plaintiff terminated a Franchise Licensing Agreement for one of the LLCs. *Id.* On June 23, 2020, Plaintiff terminated Franchise Licensing Agreements for three of the LLCs. *Id.* Plaintiff has not terminated one remaining LLC franchise agreement (connected to Red Lion Hotel in Appleton, Wisconsin); as such, the liquidated damages pursuant to that agreement is not included in this present motion. ECF No. 8 at 16.

Following these terminations, Plaintiff claims \$11,927,824.70 in damages arising from Defendant's breach of his guarantee associated with the hotel properties, in addition to \$171,362.07 in attorney's fees and costs. ECF No. 8 at 1.

DISCUSSION

A. Jurisdiction

"When entry of judgment is sought against a party who has failed to plead or otherwise defend, a district court has an affirmative duty to look into its jurisdiction over both the subject matter and the parties." *In re Tuli*, 172 F.3d 707, 712 (9th Cir. 1999) (internal citation omitted).

1 Here, the Court has subject matter jurisdiction over Plaintiff's claims by
2 diversity of citizenship under 28 U.S.C. § 1332. The amount in controversy far
3 exceeds \$75,000 and citizenship is diverse: Plaintiff is a Washington corporation
4 with its principal place of business in Denver, Colorado and Defendant is a citizen
5 of Florida. ECF No. 8 at 8.

6 Additionally, the Court has personal jurisdiction over the parties. Personal
7 jurisdiction in federal courts is determined by the law of the state in which it sits.
8 *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1068 (9th Cir. 2015). Washington state law
9 permits personal jurisdiction over defendants to the full extent permitted by the
10 Due Process Clause of the U.S. Constitution. *Shute v. Carnival Cruise Lines*, 113
11 Wash. 2d 763, 766-67 (1989). Under the Due Process Clause, a court may
12 exercise personal jurisdiction over a defendant only where "the defendant ha[s]
13 certain minimum contacts with the forum state such that the maintenance of the
14 suit does not offend traditional notions of fair play and substantial justice." *Picot*
15 *v. Weston*, 780 F.3d 1206, 1211 (9th Cir. 2015) (quoting *Int'l Shoe Co. v. Wash.*,
16 326 U.S. 310, 316 (1945)) (internal quotation marks omitted).

17 Federal law governs interpretation and enforcement of forum selection
18 clauses in diversity cases. *Manetti-Farrow, Inc. v. Gucci America, Inc.*, 858 F.2d
19 509, 513 (9th Cir. 1988). State law governs contract formation and the terms
20 contained therein. *Lowden v. T-Mobile USA, Inc.*, 512 F.3d 1213, 1217 (9th Cir.

2008). An agreed-upon forum selection clause is presumptively valid and should be upheld “absent some compelling and countervailing reason.” *Murphy v. Schneider Nat’l, Inc.*, 362 F.3d 1133, 1140 (9th Cir. 2004) (quoting *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 12 (1972)). A forum selection provision in a valid contract constitutes a waiver of objection to personal jurisdiction. *See Chan v. Society Expeditions, Inc.*, 39 F.3d 1398, 1406 (9th Cir. 1994).

Here, by contract, Defendant waived any defenses to personal jurisdiction and submitted to the exclusive jurisdiction of the federal or state courts located in Washington. ECF No. 8 at 10. There is no evidence to the contrary that these contracts are binding and enforceable. Based on the contracts and harm incurred in Washington by the Defendant’s alleged breaches, the Court finds sufficient minimum contacts for personal jurisdiction. *Id.* Thus, the Court has jurisdiction to enter judgment in this matter.

B. Procedural Requirements

Obtaining a default judgment is a two-step process. LCivR 55. A party must first file a motion for entry of default to obtain a Clerk’s Order of Default, and then file a separate motion for default judgment. *Id.* To obtain a default judgment, the moving party must “(A) specify whether the party against whom judgment is sought is an infant or an incompetent person and, if so, whether that person is represented by a general guardian, conservator, or other like fiduciary;

1 and (B) attest that the Servicemembers Civil Relief Act, 50 U.S.C. App. §§ 501-
2 597b [now codified at 50 U.S.C. § 3901, et seq], does not apply.” LCivR 55(b)(1).

3 Federal Rule of Civil Procedure 55(b) provides that a plaintiff is entitled to
4 default judgment by the Clerk where the “claim is for a sum certain or a sum that
5 can be made certain by computation” or by the Court in all other cases. When a
6 party applies for default judgment with the Court or the Clerk refers the motion to
7 the Court, the Court “may conduct hearings or make referrals—preserving any
8 federal statutory right to a jury trial—when, to enter or effectuate judgment, it
9 needs to: (A) conduct an accounting; (B) determine the amount of damages;
10 (C) establish the truth of any allegation by evidence; or (D) investigate any other
11 matter.” Fed. R. Civ. P. 55(b)(2); LCivR 55(b)(2).

12 Here, Plaintiff complied with the first step in seeking default judgment.
13 Plaintiff submitted a motion for entry of default on June 9, 2020. ECF No. 5. The
14 Clerk of the Court entered the Clerk’s Order of Default the same day for
15 Defendant’s failure “to answer or otherwise defend in this action.” ECF No. 7.
16 Regarding the second step, Plaintiff complied with Local Civil Rule 55 by
17 submitting declaration that certifies Defendant is not an infant nor incompetent
18 person, and the Servicemembers Civil Relief Act does not apply. ECF No. 18.

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C. Substantive Requirements

Federal Rule of Civil Procedure 55 “gives the court considerable leeway as to what it may require as a prerequisite to the entry of a default judgment.” *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987) (citing Fed. R. Civ. P. 55(b)(2)). “The general rule of law is that upon default the factual allegations of the complaint, except those relating to the amount of damages, will be taken as true.” *Id.* at 917-18 (internal citation omitted). The decision whether to enter default judgment is within the Court’s discretion. *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986). In evaluating the propriety of default judgment, the Court is guided by seven non-exclusive factors:

(1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff’s substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at stake in the action[,] (5) the possibility of a dispute concerning material facts[,] (6) whether the default was due to excusable neglect, and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.

Id. at 1471-72. The Court assumes facts alleged in the complaint are true. *Geddes v. United Fin. Grp.*, 559 F.2d 557, 560 (9th Cir. 1977).

1. Possibility of Prejudice

The first factor considers whether Plaintiff will suffer prejudice if default judgment is not entered. *Eitel*, 782 F.2d at 1471-72. A plaintiff would suffer prejudice if the default judgment is not entered because it would be left without

1 other recourse for recovery. *Philip Morris USA, Inc. v. Castworld Prods., Inc.*,
2 219 F.R.D. 494, 499 (C.D. Cal. 2003).

3 In this case, Plaintiff will suffer prejudice if default judgment is not entered,
4 as it would leave Plaintiff with no other remedy to proceed directly against
5 Defendant. ECF No. 8 at 11. Additionally, Plaintiff claims that it will have no
6 other recourse to have its case heard on the merits. *Id.* Thus, this factor weighs in
7 favor of an entry of default judgment.

8 2. *Merits and Sufficiency of Claims*

9 The second and third factors are often weighed together and favor a default
10 judgment when the “allegations in the complaint are sufficient to state a claim on
11 which the [plaintiff] may recover.” *Danning v. Lavine*, 572 F.2d 1386, 1388 (9th
12 Cir. 1978). Under Washington law, a breach of contract claim consists of a valid
13 contract between the parties, a breach of that contract, and resulting damages.
14 *Lehrer v. State, Dep’t of Soc. & Health Servs.*, 101 Wash. App. 509, 516 (2000)
15 (internal citation omitted).

16 Plaintiff’s complaint is well pleaded in that it adequately states the facts,
17 circumstances, and elements of its claims against Defendant. *See* ECF No. 1; ECF
18 No. 8 at 12. Plaintiff identified the contractual agreements made with LLCs which
19 Defendant personally guaranteed, Defendant’s failure to pay on the same, and the
20

1 resulting damage. ECF No. 8 at 12. Thus, the second and third factors weigh in
2 favor of an entry of default judgment.

3 3. *Money at Stake*

4 Regarding the fourth factor, the Court considers the sum of money at stake
5 in the action. *Eitel*, 782 F.2d at 1471-72. Considerations include “the amount of
6 money requested in relation to the seriousness of the defendant’s conduct, whether
7 large sums of money are involved, and whether ‘the recovery sought is
8 proportional to the harm caused by defendant’s conduct.’” *Curtis v. Illumination*
9 *Arts, Inc.*, 33 F. Supp. 3d 1200, 1212 (W.D. Wash. 2014) (quoting *Landstar*
10 *Ranger, Inc. v. Parth Enterprises, Inc.*, 725 F. Supp. 2d 916, 921 (C.D. Cal.
11 2010)).

12 a. Breach of Contract

13 Plaintiff alleges that Defendant owes a sum certain of \$11,927,842.70
14 pursuant to the guaranteed contracts. ECF No. 8 at 13, 15-17. To substantiate this
15 amount, Plaintiff submitted extensive documentation, including a declaration and
16 53 supporting exhibits. *See* ECF Nos. 9-9-53. While a large sum of money weighs
17 in favor of a decision on the merits, the amount directly relates to and flows from
18 the Defendant’s breach of his guarantees with no contradictory evidence. Thus,
19 this factor weighs in favor of default judgment for the amount alleged under the
20 indemnity agreement.

1 b. Attorney's Fees and Costs

2 Plaintiff alleges that it incurred \$170,476.29 in attorney's fees and \$885.78
3 in costs. ECF No. 8 at 18. To substantiate this amount, Plaintiff submitted
4 declarations with supporting documentation. *See* ECF Nos. 10-16.

5 Courts assess attorney's fees by calculating the lodestar figure, which is the
6 number of hours reasonably expended multiplied by the reasonable hourly rate of
7 compensation. *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983); *Johnson v. MGM*
8 *Holdings, Inc.*, 943 F.3d 1239, 1242 (9th Cir. 2019). This lodestar calculation is
9 presumptively reasonable. *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 978
10 (9th Cir. 2008) (internal citation omitted). When determining hourly rates, courts
11 look to the "prevailing market rates in the relevant community." *Vargas v. Howell*,
12 949 F.3d 1188, 1194 (9th Cir. 2020) (quoting *Blum v. Stenson*, 465 U.S. 886, 895
13 (1984)). Courts typically use the rates of comparable attorneys in the forum
14 district. *Gates v. Deukmejian*, 987 F.2d 1392, 1405 (9th Cir. 1992). When
15 determining the reasonableness of the hours expended, the Court should exclude
16 from its calculation "hours that were not reasonably expended" such as hours that
17 are "excessive, redundant, or otherwise unnecessary." *Gates*, 987 F.2d at 1397
18 (quoting *Hensley*, 461 U.S. at 433-34).

19 Seven attorneys and one paralegal billed time in this matter. ECF No. 10 at
20 4-5, ¶¶ 6-13. To compare hourly rates, Plaintiff submitted the USAO Attorney's

1 Fees Matrix with adjustment using Schedule 9 under the authority of 5 U.S.C. §
2 5332. *Id.* at 3, ¶ 4. Plaintiff submitted fee adjustments for the two relevant forum
3 districts where it pursued litigation: Spokane, Washington for the present litigation
4 against Defendant and Orlando, Florida for pursuing bankruptcy proceedings of
5 LLCs whose obligations Defendant guaranteed. *Id.* at 4, ¶ 5.

- 6 1. Hugh McCullough is a partner at Davis Wright Tremaine LLP with 16
7 years of legal experience. ECF No. 10 at 1, 4, ¶¶ 1-2, 6. Based on
8 location adjustment for Spokane and Orlando, Mr. McCullough charged
9 \$483.76 and \$488.17 respectively. *Id.* at 4, ¶ 6.
- 10 2. Matthew LeMaster is a partner at Davis Wright Tremaine LLP with 23
11 years of legal experience. ECF No. 11 at 1, ¶¶ 1-2. Based on location
12 adjustment for Spokane and Orlando, Mr. LeMaster charged \$508.54 and
13 \$513.10 respectively. ECF No. 10 at 4, ¶ 7.
- 14 3. Jordan Clark is an associate attorney at Davis Wright Tremaine LLP with
15 5 years of legal experience. ECF No. 15 at 1, ¶¶ 1-2. Based on location
16 adjustment for Spokane and Orlando, Mr. Clark charged \$311.97 and
17 \$314.81 respectively. ECF No. 10 at 4, ¶ 8.
- 18 4. Allison Condra is an associate attorney at Davis Wright Tremaine LLP
19 with 7 years of legal experience. ECF No. 14 at 1, ¶¶ 1-2. Based on
20 location adjustment for Spokane and Orlando, Ms. Condra charged
\$317.95 and \$320.85 respectively. ECF No. 10 at 4, ¶ 9.
5. Ronald Law is an attorney at Davis Wright Tremaine LLP with 11 years
of legal experience. ECF No. 13 at 1, ¶¶ 1-2. Based on location
adjustment for Spokane and Orlando, Mr. Law charged \$435.90 and
\$439.87 respectively. ECF No. 10 at 5, ¶ 10.
6. Allexia Arnold is an associate attorney at Davis Wright Tremaine LLP
with 2 years of legal experience. ECF No. 14 at 1, ¶¶ 1-2. Based on
location adjustment for Spokane and Orlando, Ms. Arnold charged
\$272.64 and \$275.13 respectively. ECF No. 10 at 5, ¶ 11.

1 7. Lauren Dorsett is an associate attorney at Davis Wright Tremaine LLP
2 with 10 years of legal experience. ECF No. 12 at 1, ¶¶ 1-2. Based on
3 location adjustment for Spokane and Orlando, Ms. Dorsett charged
4 \$370.09 and \$373.46 respectively. ECF No. 10 at 5, ¶ 12.

5 8. Nara Neves is a paralegal at Davis Wright Tremaine LLP. ECF No. 10 at
6 5, ¶ 13. Based on location adjustment for Spokane and Orlando, Ms.
7 Neves charged \$147.86 and \$149.21 respectively. *Id.*

8 While a significant sum of money weighs in favor of resolving a case on the
9 merits, the Court finds the attorney's fees and costs reasonable, especially in light
10 of the amount sought to be recovered. The Court finds the hourly rates for the
11 attorneys are reasonable under the fee matrix and prevailing market rates. The
12 Court also finds that the number of hours expended in this case are reasonable as
13 they do not appear excessive, redundant, or otherwise unnecessary. ECF No. 10-3.
14 Therefore, the fourth factor weighs in favor of default judgment as to attorney's
15 fees and costs.

16 4. *Dispute of Material Facts*

17 The fifth factor weighs the possibility of a dispute regarding any material
18 facts in the case. *Eitel*, 782 F.2d at 1471-72. As Defendant has not responded in
19 this case, all well-pleaded facts in Plaintiff's complaint are taken as true, except
20 those relating to damages. *TeleVideo Sys., Inc.*, 826 at 917-918. In light of the
contractual nature of the claims, there is little to no likelihood of a dispute
concerning material facts with the action, especially where no evidence has been

1 introduced contrary to the supporting documents. Thus, the fifth factor weighs in
2 favor of default judgment.

3 5. *Excusable Neglect*

4 The sixth factor considers whether the defendant's default is due to
5 excusable neglect. *Eitel*, 782, F.2d at 1471-72. Plaintiff has shown proper service
6 on Defendant, and there is no evidence that the failure to respond to the complaint
7 is the result of excusable neglect. *Shangahi Automation Instrument Co. v. Kuei*,
8 194 F. Supp. 2d 995, 1005 (N.D. Cal. 2001); *see also United States v. High*
9 *Country Broad. Co.*, 3 F.3d 1244, 1245 (9th Cir. 1993) (Default judgment
10 "perfectly appropriate" against party that failed to appear.). Thus, the sixth factor
11 weighs in favor of default judgment.

12 6. *Decision on the Merits*

13 The seventh factor considers the policy favoring a decision on the merits.
14 *Eitel*, 782 F.2d at 1471-72. Although this factor "almost always disfavors the entry
15 of default judgment," it is not dispositive. *Curtis*, 33 F. Supp. 3d at 1213. While
16 resolving this matter on the merits weighs in favor of denying a default judgment,
17 is not sufficient to overcome the weight of the other factors, especially where
18 Defendant's failure to respond makes a decision on the merits impractical. Thus,
19 default judgment in favor of Plaintiff and against Defendant is warranted.

1 Having reviewed the motion and record in light of the *Eitel* factors, the
2 Court finds the entry of default judgment appropriate in this case.

3 **ACCORDINGLY, IT IS HEREBY ORDERED:**

4 1. Plaintiff's Motion for Partial Default Judgment (ECF No. 8) is

5 **GRANTED.**

6 2. Judgment is awarded to Plaintiff Red Lion Hotels Franchising, Inc.

7 against Defendant Joseph G. Gillespie in the amount of \$11,927,842.70,

8 plus \$170,476.29 in attorney's fees and \$885.78 in costs.

9 3. Pursuant to Fed. R. Civ. P. 54(b), there being no just reason for delay, the

10 Clerk of Court is directed to enter Judgment against Defendant Joseph G.

11 Gillespie III accordingly, noting the applicable post-judgment statutory

12 interest rate, 28 U.S.C. § 1961.

13 The District Court Executive is directed to enter this Order and furnish
14 copies to counsel. The file remains open.

15 **DATED** October 15, 2020



A handwritten signature in blue ink that reads "Thomas O. Rice".

THOMAS O. RICE
United States District Judge